

House Engrossed

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

CHAPTER 150

# **HOUSE BILL 2623**

AN ACT

AMENDING SECTIONS 13-105, 22-131 AND 41-1823, ARIZONA REVISED STATUTES;  
RELATING TO CONSTABLES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-105, Arizona Revised Statutes, is amended to read:

13-105. Definitions

In this title, unless the context otherwise requires:

1. "Act" means a bodily movement.

2. "Benefit" means anything of value or advantage, present or prospective.

3. "Calendar year" means three hundred sixty-five days' actual time served without release, suspension or commutation of sentence, probation, pardon or parole, work furlough or release from confinement on any other basis.

4. "Community supervision" means that portion of a felony sentence THAT IS imposed by the court pursuant to section 13-603, subsection I and THAT IS served in the community after completing a period of imprisonment or served in prison in accordance with section 41-1604.07.

5. "Conduct" means an act or omission and its accompanying culpable mental state.

6. "Crime" means a misdemeanor or a felony.

7. "Criminal street gang" means an ongoing formal or informal association of persons whose IN WHICH members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony act and that has at least one individual who is a criminal street gang member.

8. "Criminal street gang member" means an individual to whom two of the following seven criteria that indicate criminal street gang membership apply:

(a) Self-proclamation.

(b) Witness testimony or official statement.

(c) Written or electronic correspondence.

(d) Paraphernalia or photographs.

(e) Tattoos.

(f) Clothing or colors.

(g) Any other indicia of street gang membership.

9. "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as those terms are ~~thusly~~ defined IN THIS PARAGRAPH:

(a) "Intentionally" or "with the intent to" means, with respect to a result or to conduct described by a statute defining an offense, that a person's objective is to cause that result or to engage in that conduct.

(b) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that ~~his or her~~ THE PERSON'S conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

(c) "Recklessly" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and

1 consciously disregards a substantial and unjustifiable risk that the result  
2 will occur or that the circumstance exists. The risk must be of such nature  
3 and degree that disregard of such risk constitutes a gross deviation from the  
4 standard of conduct that a reasonable person would observe in the situation.  
5 A person who creates such a risk but WHO is unaware of such risk solely by  
6 reason of voluntary intoxication also acts recklessly with respect to such  
7 risk.

8 (d) "Criminal negligence" means, with respect to a result or to a  
9 circumstance described by a statute defining an offense, that a person fails  
10 to perceive a substantial and unjustifiable risk that the result will occur  
11 or that the circumstance exists. The risk must be of such nature and degree  
12 that the failure to perceive it constitutes a gross deviation from the  
13 standard of care that a reasonable person would observe in the situation.

14 10. "Dangerous drug" means dangerous drug as defined by IN section  
15 13-3401.

16 11. "Dangerous instrument" means anything that under the circumstances  
17 in which it is used, attempted to be used or threatened to be used is readily  
18 capable of causing death or serious physical injury.

19 12. "Deadly physical force" means force ~~which~~ THAT is used with the  
20 purpose of causing death or serious physical injury or in the manner of its  
21 use or intended use is capable of creating a substantial risk of causing  
22 death or serious physical injury.

23 13. "Deadly weapon" means anything designed for lethal use, including a  
24 firearm.

25 14. "Economic loss" means any loss incurred by a person as a result of  
26 the commission of an offense. Economic loss includes lost interest, lost  
27 earnings and other losses ~~which~~ THAT would not have been incurred but for the  
28 offense. Economic loss does not include losses incurred by the convicted  
29 person, damages for pain and suffering, punitive damages or consequential  
30 damages.

31 15. "Enterprise" includes any corporation, association, labor union or  
32 other legal entity.

33 16. "Felony" means an offense for which a sentence to a term of  
34 imprisonment in the custody of the state department of corrections is  
35 authorized by any law of this state.

36 17. "Firearm" means any loaded or unloaded handgun, pistol, revolver,  
37 rifle, shotgun or other weapon ~~which~~ THAT will or is designed to or may  
38 readily be converted to expel a projectile by the action of expanding gases,  
39 except that it does not include a firearm in permanently inoperable  
40 condition.

41 18. "Government" means the state, any political subdivision of the  
42 state or any department, agency, board, commission, institution or  
43 governmental instrumentality of or within the state or political subdivision.

44 19. "Government function" means any activity ~~which~~ THAT a public  
45 servant is legally authorized to undertake on behalf of a government.

46 20. "Intoxication" means any mental or physical incapacity resulting  
47 from use of drugs, toxic vapors or intoxicating liquors.

21. "Misdemeanor" means an offense for which a sentence to a term of imprisonment other than to the custody of the state department of corrections is authorized by any law of this state.

22. "Narcotic drug" means narcotic drugs as defined by IN section 13-3401.

23. "Offense" or "public offense" means conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of the state in which it occurred or by any law, regulation or ordinance of a political subdivision of that state and, if the act occurred in a state other than this state, it would be so punishable under the laws, regulations or ordinances of this state or of a political subdivision of this state if the act had occurred in this state.

24. "Omission" means the failure to perform an act as to which a duty of performance is imposed by law.

25. "Peace officer" means any person vested by law with a duty to maintain public order and make arrests AND INCLUDES A CONSTABLE.

26. "Person" means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government, a governmental authority or an individual or entity capable of holding a legal or beneficial interest in property.

27. "Petty offense" means an offense for which a sentence of a fine only is authorized by law.

28. "Physical force" means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force.

29. "Physical injury" means the impairment of physical condition.

30. "Possess" means knowingly to have physical possession or otherwise to exercise dominion or control over property.

31. "Possession" means a voluntary act if the defendant knowingly exercised dominion or control over property.

32. "Property" means anything of value, tangible or intangible.

33. "Public servant":

(a) Means any officer or employee of any branch of government, whether elected, appointed or otherwise employed, including a peace officer, and any person participating as an advisor or consultant or otherwise in performing a governmental function.

(b) Does not include jurors or witnesses.

(c) Includes those who have been elected, appointed, employed or designated to become a public servant although not yet occupying that position.

34. "Serious physical injury" includes physical injury which THAT creates a reasonable risk of death, or which THAT causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

35. "Unlawful" means contrary to law or, where the context so requires, not permitted by law.

1       36. "Vehicle" means a device in, upon or by which any person or  
2 property is, may be or could have been transported or drawn upon a highway,  
3 waterway or airway, excepting devices moved by human power or used  
4 exclusively upon stationary rails or tracks.

5       37. "Voluntary act" means a bodily movement performed consciously and  
6 as a result of effort and determination.

7       38. "Voluntary intoxication" means intoxication caused by the knowing  
8 use of drugs, toxic vapors or intoxicating liquors by a person, the tendency  
9 of which to cause intoxication the person knows or ought to know, unless the  
10 person introduces them pursuant to medical advice or under such duress as  
11 would afford a defense to an offense.

12       Sec. 2. Section 22-131, Arizona Revised Statutes, is amended to read:

13       22-131. Constables; powers and duties

14       A. Constables shall attend the courts of justices of the peace within  
15 their precincts when required, and within their counties execute, serve and  
16 return all processes and notices directed or delivered to them by a justice  
17 of the peace of the county or by competent authority. In addition to any  
18 other provision of law these duties may be enforced by the presiding judge of  
19 the superior court in the county, including the use of the power of contempt.

20       B. Constables shall attend the training prescribed in section 22-137.

21       C. Constables, with the consent of and at salaries fixed by the board  
22 of supervisors, may appoint deputies WHO ARE CERTIFIED PURSUANT TO SECTION  
23 41-1822, SUBSECTION A, PARAGRAPH 3, stenographers, clerks and assistants  
24 necessary to conduct the affairs of their offices. The appointments shall be  
25 in writing and filed in the office of the county recorder.

26       D. The provisions of law relating to sheriffs, as far as applicable,  
27 shall govern the powers, duties and liabilities of constables.

28       E. A CONSTABLE WHO IS DULY ELECTED OR WHO IS APPOINTED BY THE BOARD OF  
29 SUPERVISORS HAS THE AUTHORITY OF A PEACE OFFICER ONLY IN THE PERFORMANCE OF  
30 THE CONSTABLE'S OFFICIAL DUTIES.

31       Sec. 3. Section 41-1823, Arizona Revised Statutes, is amended to read:

32       41-1823. Adoption of minimum qualifications; certification  
33       required

34       A. No minimum qualifications for law enforcement officers adopted  
35 pursuant to this article shall be effective until six months after they have  
36 been filed with the secretary of state pursuant to section 41-1031.

37       B. Except for agency heads duly elected as required by the  
38 constitution and persons given the authority of a peace officer pursuant to  
39 section 8-205, 11-572, 12-253, or 13-916 OR 22-131, no person may exercise  
40 the authority or perform the duties of a peace officer unless he is certified  
41 by the board pursuant to section 41-1822, subsection A, paragraph 3.

APPROVED BY THE GOVERNOR MAY 1, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2008.